

## CALIFORNIA COASTAL COMMISSION

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# Th9a

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 9-22-0219

**Applicant:** DCOR, LLC

**Applicants Agent:** April Winecki, Winecki Consulting Inc., and Stanley Lamporn, Cox, Castle & Nicholson LLP.

**Location:** State waters approximately 1-mile offshore of Bolsa Chica State Beach, Orange County.

**Project Description:** Request for after-the-fact authorization to install repair clamps to seal an oil leak on an 8-inch diameter offshore pipeline (Line 0919), including associated mobilization, inspection, and seafloor work; and proposal to submit funds to the Violation Remediation Account to address alleged liabilities under the Coastal Act.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION

On December 22, 2021, DCOR LLC. (“DCOR”) reported that a crew boat located a rainbow-colored sheen on the Pacific Ocean from an unknown source. Two days later, the California Department of Fish and Wildlife’s Office of Oil Spill Prevention and Response confirmed that an 8-inch offshore pipeline (Line 0919) owned by DCOR was

leaking oil into the marine environment approximately 1-mile offshore of Bolsa Chica State Beach in Orange County. The crude oil discharged into the ocean created a surface sheen that was moved by ocean currents and wind onto area beaches. Immediately following the report of the leak, DCOR ceased operations of Line 0919. Line 0919 is a buried steel seafloor pipeline covered in anti-corrosion coating that is used to transport crude oil from DCOR's offshore Platform Eva (located in state waters approximately 2 miles offshore of Bolsa Chica State Beach) north to its Fort Apache Onshore Facility in Huntington Beach. Investigations carried out by DCOR, with direction from the State Lands Commission (SLC) and the Office of the State Fire Marshal (OSFM), determined that the cause of the Line 0919 failure was internal corrosion that thinned the pipe wall, leading to the development of a 3/16-inch diameter hole at the bottom of the pipeline (at the six o'clock position), causing the release of crude oil into the ocean environment. The exact timing of when the oil release started and the total amount of oil spilled has not been definitively determined and the manner in which the pipeline breach occurred may prevent such a determination, as described further below.

In this CDP application, DCOR is seeking after-the fact (ATF) authorization for the development activities associated with and including installation of the pipeline repair clamps that were used to stop the oil leak and seal the line.<sup>1</sup> These activities involved mobilizing surface vessels and underwater equipment and repair teams, inspecting and surveying the pipeline route to identify the area of release, excavating the buried pipeline, and removing the factory installed anti-corrosion coating from the pipe to facilitate identifying and locating the pipeline breach. At that point, a temporary 8"x12" repair clamp was placed around the entire 360 degrees of the damaged pipeline and bolted down to contain further leakage while the final 8"x18" repair clamp was prepared and subsequently bolted in place seventeen days later.

Violations of the Coastal Act have occurred at the site including, but not necessarily limited to: 1) the discharge of oil from Line 0919 into the surrounding ambient ocean environment, resulting in the fouling of state waters and beaches; 2) the release of additional oil into the ocean as part of DCOR's efforts to locate the spill release point; 3) excavation trenching of the ocean floor to expose the buried pipeline; and 4) activities associated with and including the installation of a temporary 8"x12" repair clamp around the damaged pipe to stop the leak, followed by the installation of a final 8"x18" repair clamp.

DCOR prepared and submitted this CDP application and is now proposing to address the matter by bringing the pipeline repair work into compliance with the Coastal Act by going through the administrative process and seeking ATF authorization from the Commission. In order to address the Commission's claims for monetary penalties for these violations under Chapter 9 of the Coastal Act, to avoid the cost and uncertainty of contested administrative proceedings and potential litigation, and to otherwise fully

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<sup>1</sup> DCOR did not obtain a Coastal Development Permit (CDP) or an Emergency Coastal Development Permit prior to undertaking the work.

resolve the violations at issue, DCOR is also proposing to pay, within 90 days of approval of this CDP, \$200,000 into the Violation Remediation Account, as discussed in more detail in Section G, below.<sup>2</sup> Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit, and DCOR's timely payment of \$200,000 will result in resolution of the violations specifically described herein.

This application is limited to a request for ATF authorization for activities carried out to locate a leak in an offshore oil pipeline and install a clamp to stop the leak. This application does not include a request to repair, retrofit or replace the pipeline in the future so that it may be re-started and returned to use transporting oil. Such activities will require a new CDP application and will be subject to future consideration by the Commission, as well as other regulatory agencies, including the California State Lands Commission and the Office of the State Fire Marshal.

Coastal Act issues raised by DCOR's pipeline repair project involve the fill of open coastal waters, potential impacts to marine biological resources, water quality, commercial fishing, public access and recreation, and the prevention and effective containment of oil spills. Commission staff believes that the adverse impact avoidance measures that were implemented by DCOR during the project, in combination with the implementation of new **Special Condition 1**, will avoid and reduce potential adverse impacts to coastal resources consistent with the policies of the Coastal Act. **Special Condition 1** requires DCOR to perform a visual assessment of the project site to ensure that the site has been restored to its pre-development condition. The assessment would help ensure that the site is free of construction related debris/material, including any residual oil or debris from pipeline linear removal efforts. In addition, the assessment would include reburial of the pipeline segment that was excavated and exposed during the project, if it remains in an unburied condition.

Commission staff therefore recommends that the Commission **APPROVE** coastal development permit application 9-22-0219, as conditioned.

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<sup>2</sup> DCOR does not acknowledge any wrongdoing and DCOR's proposal to make the payment does not suggest or imply any such wrongdoing.

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## EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Oil Recovery Dome Photo

Exhibit 3 – Temporary Clamp Photo

Exhibit 4 – Final Clamp Photo

## I. MOTION AND RESOLUTION

Motion:

*I move that the Commission approve Coastal Development Permit 9-22-0219 subject to conditions set forth in the staff recommendation specified below.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

*The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the after-the-fact development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.*

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

#### **1. Post-Development Site Assessment. WITHIN 30 DAYS OF PERMIT**

**APPROVAL** DCOR shall provide the results of the January 8<sup>th</sup>, 2023 inspection of the seafloor project site (including the areas of clamp installations and pipeline coating removal activities) to ensure that: 1) the project site is free of construction related material and debris; 2) the project site is free of any observable residual oil; and 3) the pipeline segment that was excavated and exposed as part of the project is reburied. The inspection shall be performed by an appropriately qualified third-party, shall include the capture of video and/or still pictures of the current condition of the project site, and the submittal of a written report to the Executive Director for review and approval that includes and clearly details the following:

**a) Debris Cleanup** – DCOR shall ensure that the site is free of construction related material and debris. All construction related material and debris, if observed, shall be immediately removed from the project site and disposed of properly.

**b) Residual Oil Removal** – DCOR shall ensure that there is no residual oil remaining at the project site. If any residual oil is observed at the project site, DCOR shall submit a plan, for Executive Director review and approval, that describes how the residual oil will be removed in a manner that avoids and reduces adverse impacts to coastal resources. The plan shall include submittal of a complete application to amend this coastal development permit to authorize the residual oil removal activity, unless the Executive Director determines that no such permit amendment is required.

**c) Pipeline Re-burial** – DCOR shall ensure that the pipeline segment that was excavated and exposed as part of the investigation and repair work is reburied. If any portion of the pipeline and/or repair clamp is exposed, DCOR shall submit a plan, for Executive Director review and approval, that describes how the pipeline and/or repair clamp will be reburied to an appropriate depth in a manner that avoids and reduces impacts to coastal resources. The plan shall include submittal of a complete application to amend this coastal development permit to authorize the pipeline reburial activity, unless the Executive Director determines that no such permit amendment is required.

### **IV. FINDINGS AND DECLARATIONS**

#### **A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION**

## **Project Location**

DCOR, LLC's Line 0919 is a steel seafloor pipeline covered in anti-corrosion coating and used to transport crude oil from DCOR's offshore Platform Eva north to its Fort Apache Onshore Facility in Huntington Beach.<sup>3</sup> Platform Eva is located in state waters approximately two miles west of Bolsa Chica State Beach, Orange County. The Fort Apache Onshore Facility is located in a residential area in the city of Huntington Beach, Orange County.

The project is located generally at the site of a breach on the pipeline, approximately one-mile offshore of Bolsa Chica State Beach, Orange County. The pipeline repair work took place in water depths of approximately 40-feet and required that roughly 12-15 linear feet of the pipeline be uncovered from approximately one to two feet of loose sediment on the ocean floor. The aerial photograph in Exhibit 1 provides a visual perspective of the site in relation to the local beaches, Bolsa Chica State Beach, Talbert Marsh, Santa Ana River, and the area of City of Huntington Beach Lifeguard Tower 10 and Dog Beach, where tarballs were reported to have washed ashore.

## **Background**

### *Oil Spill, Response, and Recovery Summary<sup>4</sup>*

On December 22, 2021, Coastal Commission staff received notice that a Unified Command consisting of US Coast Guard (USCG), California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR), and the County of Orange was responding to a report of a sheen approximately one-mile offshore Bolsa Chica State Beach.<sup>5,6</sup> As part of this response, boom protection strategies were deployed at environmentally sensitive shoreline sites including, Talbert Marsh, Bolsa Chica, Santa Ana River, and Newport Slough. Additionally, DCOR ceased transporting oil through line 0919. On December 23, 2021, the USCG conducted overflights while crews monitored beaches and shorelines from Anaheim Bay to the Santa Ana River. The sheen was reported approximately 2 miles offshore of Huntington Beach and tarballs were reported to have come onshore at Huntington Beach between City Lifeguard Tower 10 and Dog Beach. Cleanup crews were deployed to conduct cleanup of the tarballs in that location.<sup>7</sup>

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<sup>3</sup> The pipeline was initially installed prior to the Coastal Act. Replacement of the pipeline was authorized in 1984 by the Commission (CDP # E-84-002).

<sup>4</sup> This spill, response, and recovery summary, and timeline of events has largely been taken from OSPR Liaison reports and USCG ICS 209 forms that were issued during the incident.

<sup>5</sup> OES Report # 21-7337, NRC Report #1325103) - OSPR Liaison Flash Update #1.

<sup>6</sup> Evidence included in the USCG ICS 209 forms suggest that an offshore sheen reported on December 15<sup>th</sup> and responded to on December 16<sup>th</sup>, with skimming vessels, sand berm construction at the mouth of the SAR, and placement of boom protection strategies at sensitive sites along the shoreline, was also attributable to DCOR. The USCG form estimates that 5-10 gallons of oil was collected on the east side of Platform Eva and 15-20 gallons was collected on the south side of Platform Eva. See also OES report #21-7193. The proposal by DCOR to address alleged liabilities under the Coastal Act also address this one-time, specific event that occurred on December 15.

<sup>7</sup> OSPR Liaison Update #3.

On December 24, 2021, DCOR joined the Unified Command as the responsible party for the oil spill. Overflights conducted by the Unified Command confirmed no observable oil or sheen on the water or shoreline.<sup>8</sup> The source of the previously observed sheening was determined to have been in the vicinity of the DCOR pipeline 0919 and nearby oil production platform Eva.<sup>9</sup> On December 24, 2021, a response boat patrolled the pipeline to detect any indications of additional discharge of oil. Plans for a dive team were put into place and were mobilized once weather conditions improved. Protective strategies remained in place at Bolsa Chica Wetlands, Talbert Marsh, Newport Slough, and the Santa Ana River while beach cleanup crews and oil spill response vessels were on-standby to remove any additional oil that was observed.<sup>10</sup> There was no indication of ongoing shoreline impacts at that time.

A dive team mobilized on December 28, 2021 as part of planned operations to inspect the pipeline in response to the spill. Protective strategies remained in place at Bolsa Chica Wetlands, Talbert Marsh, Newport Slough, and the Santa Ana River. Beach cleanup crews and oil spill response vessels remained on-standby to respond to any reports of oil on water or the shoreline. Reconnaissance teams conducted shoreline surveys from Belmont Shores to the Santa Ana River and confirmed no additional shoreline oiling. On December 31, 2021, a dive team again mobilized to inspect the pipeline. Due to inclement weather conditions throughout the week, the divers had not yet completed their inspection of the line. On January 1, 2022, dive teams completed a visual inspection of 1200-feet of the pipeline in the area of the sheen and observed no anomalies.

Protective strategies remained in place at Bolsa Chica Wetlands and Newport Slough, but due to high outflows from rains, the protective strategies at Talbert Marsh and the Santa Ana River were temporarily removed and staged nearby so they could be ready to be deployed, if needed. Beach cleanup crews and oil spill response vessels remained on-standby to respond to any reports of oil on the water or on the shoreline. Shoreline reconnaissance surveys continued focusing on the Huntington Beach area from Bolsa Chica State Beach to the Santa Ana River and confirmed no additional shoreline oiling.<sup>11</sup>

On January 2, 2022, in an effort to locate the precise leak point, DCOR commenced evacuation of the pipeline with seawater. This process created an on-water sheen which was observed and reported by on-site aerial operations. The evacuation operations immediately ceased, and divers descended to the pipeline and were able to quickly locate the pipeline breach. An oil recovery dome was put in place over the breach to capture any residual oil that continued to weep out of the pipeline. An additional sheen

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<sup>8</sup> It should be noted that this oil is not associated with the spill on October 2, 2021, also in the Huntington Beach area, known as the Amplify or Pipeline P00547 spill.

<sup>9</sup> According to OSPR, DCOR had ceased all platform and pipeline operations on December 22, 2021.

<sup>10</sup> OSPR Liaison Update #4.

<sup>11</sup> Liaison Update #6.



was observed on the morning of January 4, 2022 and was collected by the prepositioned response assets standing by. In the afternoon of January 4, 2022, divers excavated the pipeline in the area of the observed breach and placed a temporary clamp on the pipe, which stopped oil from weeping out from beneath the anti-corrosion coating on the pipeline. The actual breach in the pipeline was not identified, however, so divers continued to work to excavate the pipeline around the area in which oil was being released from beneath the pipeline's coating layer in order to move forward with repair operations.<sup>12</sup>

On January 10, 2022, after additional pipe excavation and removal of more portions of the pipeline's anti-corrosion coating, divers were able to locate a 3/16-inch leak-point on the pipeline (approximately 5.5 feet away from the location oil was previously observed being released from beneath the anti-corrosion coating layer) and placed another temporary 8"x12" repair clamp on the pipeline. The previously installed clamp installed at the location oil was seen exiting from beneath the anti-corrosion coating was removed. It appeared that oil was being released from the pipeline at the 3/16-inch breach and pooling beneath the coating before finding an exit point into the marine environment through cracks and holes in the anti-corrosion coating. Divers continued to remove 6-inch sections of anti-corrosion coating as part of operations to further assess the pipeline's integrity. Prepositioned response assets, including an underwater pollution recovery dome anchored above the line, three surface vessels with the capability of booming and skimming oil, one helicopter, and one drone for aerial surveillance, were used to minimize further oil releases and continually monitored for evidence of oil/sheen at the location of the diver work site.<sup>13</sup>

On January 12, 2022 evacuation pumping operations with sea water commenced in an effort to remove remaining oil from the line. No oil was released from the temporary clamp and no sheening was observed. Divers observed no issues during evacuation pumping operations.<sup>14</sup> Evacuation pumping operations were paused from January 13 through January 16 while additional safety measures were put in place to protect the health of response personnel. On January 17, evacuation operations resumed. A cleaning pig (a device used to perform various maintenance operations for pipelines) was launched into the pipeline to begin the process of removing residual oil. Divers observed no issues during evacuation pumping operations. No oil was released from the pipeline clamp and no oil/sheening in the water was observed. A second pig was launched to further remove residual oil from the pipeline to ensure that the pipeline was fully evacuated.<sup>15</sup>

One prepositioned response vessel was on-scene on January 21, 2022 and one drone was in service for aerial surveillance while divers completed operations to prepare the

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<sup>12</sup> Liaison Update #9.

<sup>13</sup> Liaison Update #10.

<sup>14</sup> Liaison Update #11.

<sup>15</sup> Liaison Update #12.

pipeline for a permanent repair. Protective strategies at Bolsa Chica Wetlands, Newport Slough, Talbert Marsh and the Santa Ana River were demobilized.<sup>16</sup> On January 27, 2022, DCOR installed a final permanent 8"x18" PLIDCO split-sleeve repair clamp over the pipeline where the leak-point was found.

According to the USCG Incident Status Summary 209 form dated January 22, 2022 liquid oil recovered offshore through skimming (including from the sheen that was reported on December 15<sup>th</sup>, 2021) was estimated to be 86-111 gallons; oily Debris/Misc. (which includes used/oiled sorbent pads, oil recovered from skimming vessel decontamination procedures, industrial rags, and products from skimming vessels) was estimated to be 20-25 gallons; the underwater recovery dome was estimated to have collected 70-100 gallons of oil; and shoreline recovered tarball/patties were estimated to weigh 12-28 pounds.

These amounts of recovered oil, however, represent only a portion of the total amount discharged into the marine environment. Past research discussed in a report on "Best Achievable Technology - Mechanical Response" submitted to the California State Legislature in December of 2016 by the California Department of Fish and Wildlife Office for Spill Prevention and Response (OSPR) discusses how oil spill recovery efforts in open ocean and shoreline areas can capture less than 20% of the total spilled volume. In addition, the manner in which this particular pipeline breach manifested and was detected indicates that it could potentially have been present and leaking oil for a significant duration prior to the observation of the surface sheen on December 22, 2021. Further, other breaches in the pipeline may also have been present that were not detected. Because the breach occurred behind a deposit of paraffin-like material on the inside of the pipeline that appears to have "masked" it from detection by the pipeline inspection and monitoring equipment regularly used by DCOR, it is not known when the breach first appeared and began leaking oil. While it is possible that the breach first occurred shortly before the surface sheen was detected, it is also possible that it occurred earlier and that the leaking oil did not result in detectable sheen or that the sheen was not observed or reported (for example, if it occurred at night or was attributed to another possible source in the area such as shipping traffic or the unrelated leak from the nearby Amplify pipeline).

It should be noted that DCOR is proceeding with the development of plans to place a new pipeline within the existing pipeline in order to bring it back into service. The primary determination of whether this would be allowable is at the discretion of the Office of the State Fire Marshal (OSFM) and the United States Pipeline and Hazardous Materials Safety Administration (PHMSA). If the OSFM determines that this "sleeving" project is allowable, DCOR would then need to coordinate with the State Lands Commission (SLC) in addition to the Coastal Commission for final project approvals. DCOR is currently prohibited from resuming the use of both the pipeline and Platform Eva, pursuant to the SLC's lease and regulations, until all corrective actions have been taken. Once DCOR has met its various regulatory obligations, only then may the SLC lift

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<sup>16</sup> FINAL Liaison Update #13.

its Cease-and-Desist Order. The Commission staff continues to work closely with SLC staff and the OSFM to address next steps.

#### *ATF Development Application*

On March 21, 2022, DCOR submitted a Coastal Development Permit (CDP) application to the Commission requesting, after-the-fact, authorization for activities associated with the installation of clamps to secure the pipeline and prevent it from further uncontrolled releases of crude oil. In its application, DCOR does not propose any new development activities relating to repair or operation of the pipeline; it proposes only to authorize permanently the work that has already been completed to identify the source of an oil leak and install a clamp over it to prevent further releases. As described in more detail in the "Project Description" section below, that prior work involved mobilizing equipment including work vessels, an underwater oil recovery dome, anchors and seafloor construction devices; inspecting and surveying the pipeline route to identify the area of uncontrolled oil release; excavating the buried pipeline; and removing the factory installed anti-corrosion coating from the steel pipeline to facilitate identification of the leak source. At that point, a temporary 8"x12" pipeline clamp was placed around the entire 360 degrees of the damaged pipeline and bolted down to contain further leakage while a more permanent 8"x18" pipeline clamp was prepared and subsequently bolted in place. These clamps provide a seal over the outer surface of the pipeline without affecting the inside of the line. The purpose of these clamps was to seal the line sufficiently for it to be purged of oil without causing further releases so that a more detailed corrosion inspection and investigation could be carried out to inform the development of a plan for future repair and re-start.

Even though the repair work for which DCOR seeks ATF authorization has already been completed, for the Commission's CDP review purposes, the installation of the pipeline clamps and other ATF development must be treated as if it is all newly proposed at this time, because it was not previously reviewed, permitted, and conditioned (as applicable) in consideration of impacts to coastal resources and applicable Coastal Act requirements.

#### **Project Description**

The project included the mobilizing of surface vessels and dive teams to first survey and inspect the pipeline to identify the area of release. Once identified, the M/V Surveyor, a 101-foot work vessel anchored at the leak location on the water surface. The M/V Surveyor served as the central station for diver operations as the work was being carried out. An additional SCSS crew boat was directed to be on standby for use at the pipeline leak location. As divers descended to inspect the leak location, small droplets of oil continued to express from the found leak point on the sea floor. At that point, an oil recovery dome was put in place over the leak location to capture any oil that continued to leak from the sea floor. (See Exhibit 2 for a photograph of the oil recovery dome). For added stability and to counter any buoyancy effects due to air entrainment under the dome, clump weights were attached to the dome foot pads on the ocean floor. Divers then connected a 2" hose and diaphragm pump from the top of the dome to

pump any residual oil captured under the dome into a check drum and then into containment tote(s) located on the M/V Surveyor on the water surface above.

Divers excavated a portion of the pipeline (approximately 2 feet overall) and discovered the leak point on the top of the pipeline. The divers reported (4) locations (clock positions looking north on the pipeline) where oil was seeping through the anti-corrosion pipeline coating: Hole #1 - ~1" long slit in the coating at 11:00 position with light flow of oil; Hole #2 - ~1/4" x 1/4" at 10:00 position with the majority of oil flow; Hole #3 - ~1/4" x 1/4" at 10:45 position with the 2nd most flow of oil; and Hole #4 - ~2" long slit in the coating at 2:00 position with light oil flow. After assessing the pipeline leak location, a 12" temporary clamp was installed securely over the leak area which immediately stopped the leak.

The actual breach in the steel pipeline was not immediately identified, however, so divers continued to work using hand tools to excavate the pipeline around the area in which oil was being released from beneath the pipeline's coating layer to move forward with the work. Sediment was removed roughly 1-2 feet to the top of the pipe at the leak point and approximately 3 feet in both directions of pipe and down to 3 o'clock and 9 o'clock position (exposed the top half of the pipe). Air-jetting was used to expose the bottom half of the pipe. After additional pipe excavation and removal of more portions of the pipeline's anti-corrosion coating in 6-inch increments, divers were able to locate a 3/16-inch leak-point on the pipeline. The true leak point location on the pipeline was found at the 6 o'clock position approximately 5 1/2 feet from the original leak expression point on the pipe. At that point, a temporary 8"x12" repair clamp was placed around the entire 360 degrees of the damaged pipeline and bolted down to contain further leakage. (See Exhibit 3 for a photograph of the temporary 8" x 12" clamp).

Once the pipeline was secured with the temporary clamp, evacuation pumping operations with sea water continued in an effort to remove remaining oil from the line. Following the evacuation pumping, a cleaning pig (a device used to perform various maintenance operations for pipelines) was launched into the pipeline to begin the process of removing residual oil. A second pig was launched to further remove residual oil from the pipeline and to ensure that the pipeline was fully evacuated. According to the application, a leak detection system was utilized during pigging operations to observe and record continuous offshore and onshore Coriolis meter readings, pressure readings and monitor the leak detection. Divers observed no issues during evacuation pumping and pigging operations. No oil was released from the temporary clamp and no oil/sheening in the water occurred. As described previously, prepositioned response assets, including an underwater oil recovery dome, three surface vessels with the capability of booming and skimming oil, one helicopter, and one drone for aerial surveillance, continually monitored for evidence of oil/sheen at the location of the diver work site.

One prepositioned response vessel was on-scene and one drone was in service for aerial surveillance while divers completed operations to prepare the pipeline for a permanent repair clamp. Preparing the pipe for a permanent clamp included removing

all coatings, rust, and scale from the pipe surface where the circumferential seals of the clamp would contact the pipe. The cleaner the pipe surface, the more positive the seal. According to the application, seventeen days after the temporary clamp was installed, the final 8"x18" Plidco split-sleeve repair clamp was ready and subsequently bolted in place. (See Exhibit 4 for a photograph of the final 8" x 18" split-sleeve repair clamp).

## **B. OTHER AGENCY REVIEW AND COORDINATION**

### **Unified Command**

The installation of the repair clamps at issue in this after-the-fact authorization was directed by a Unified Command (UC). A UC links various agencies and organizations responding to the incident and provides a forum for these entities to make consensual decisions. The UC is responsible for overall management of the incident. Members of the UC work together to develop a common set of incident objectives and strategies, share information, maximize the use of available resources, and enhance the efficiency of the individual response organizations.

During this event, Commission staff had communicated the need for more information about the scope of the activities being considered to seal the leak and the likelihood that a Coastal Development Permit (CDP) would be required to authorize them. In this case, a CDP was not sought at the time to authorize the work. Commission staff and the primary state agencies represented on the UC, including the California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR), the California State Lands Commission (SLC) and the California Office of the State Fire Marshal (OSFM), have been in communication since the time that DCOR initiated the repair work and Commission staff have provided regular updates regarding their work with DCOR to address the unpermitted pipeline repair activities and oil spill.

### **United States Coast Guard**

During the spill response, the United States Coast Guard (USCG) was the designated federal on-scene coordinator and played a key role in guiding and facilitating response efforts. USCG staff also work closely with the Commission's Oil Spill Program Coordinator in a variety of capacities to share information and expertise regarding oil spill prevention and response.

### **Office of Spill Prevention and Response**

The California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR) is the state's lead for prevention and response to oil spills in its inland and marine waters and provides oversight for any project that poses a risk of oil spill from any source, including pipelines, production facilities, and the increasing shipments of oil transported by railroads. Commission staff and OSPR staff are in the process of sharing information and developing protocols, including the use of the Executive Director's expedited emergency permit authority, to help ensure that that any similar situations in the future can proceed in a manner that both ensures the fastest possible resolution of

an ongoing leak as well as compliance with the regulatory requirements of the Coastal Act.

### **California State Lands Commission**

Line 0919 is within a lease of state submerged lands issued by the California State Lands Commission (SLC). In accordance with the SLC's regulations, an immediate suspension of drilling and production operations was required to control pollution caused by such operations and corrective action was required to be taken immediately. Similarly, the lease agreement between DCOR and the SLC obligates DCOR to perform repairs and maintenance as required to maintain the lease premises and improvements in good order and repair and safe condition. In this case, SLC staff determined that a lease amendment would not be necessary for the proposed project because it would be carried out consistent with the operations and maintenance provisions of the existing lease.

### **Office of the State Fire Marshal**

The Office of the State Fire Marshal (OSFM) authority includes control of the spill and the repair of the leaking pipe as well as the ongoing maintenance and operations of the pipeline. Additional pipeline internal and external corrosion survey inspections are being conducted and analyzed by the OSFM. DCOR must also receive from the OSFM to restart oil transport through the pipeline. Commission staff have been in regular communication with OSFM regarding this approval process and its status and have conveyed that further repair or replacement of the pipeline, including installation of a new pipeline or casing within the existing pipeline would necessitate additional Coastal Act review.

## **C. FILL OF OPEN COASTAL WATERS**

Section 30233(a) of the Coastal Act states:

*The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the*

*placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

The proposed placement of anchors, excavation of material, and placement of the two repair clamps (first the temporary clamp and then the permanent clamp) on the offshore pipeline for which DCOR seeks after-the-fact authorization constitute “fill” as defined by Section 30108.2 of the Coastal Act, which states:

*“Fill” means earth or any other substance or material, including pilings placed for the purpose of erecting structures thereon, placed in a submerged area.*

Coastal Act Section 30233(a) allows for the dredging and placement of fill in coastal waters if three tests are met: (1) the purpose of the dredging and fill constitutes an allowable use under 30233(a); (2) there is no feasible less environmentally damaging alternative to the dredging and fill; and (3) feasible mitigation measures have been provided to minimize any adverse effects.

### **Allowable use**

DCOR excavated material covering the pipelines and placed fill in coastal waters for the purpose of stopping an oil leak. The “fill” includes the pipeline repair clamps. The temporary repair clamp was 12-inches long and 8-inches in diameter, the permanent repair clamp is 18-inches long by 8-inches in diameter and expanded the size and footprint of the pipeline by several cubic feet.

Section 30107 of the Coastal Act defines “Energy Facility” as “any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.” Because the pipeline is used for transmitting or transporting petroleum, it meets the definition of an “energy facility” in the Coastal Act. Further, because the pipeline would be physically reinforced and slightly expanded through the proposed placement of fill (clamps), the placement of this fill would be for an “expanded energy facility” and thus qualify as an “allowable use” under 30233(a)(1). The project is therefore consistent with the first test of Section 30233(a).

### **Alternatives**

The second test of Coastal Act Section 30233 requires an assessment of whether there are feasible less environmentally damaging alternatives. The project was undertaken as

part of emergency oil spill response led by a Unified Command with oversight from a variety of agency personnel. Based on information provided to Commission staff, DCOR coordinated with the Unified Command and participant agencies, including the SLC and OSFM, on the development and implementation of the approach to sealing the pipeline leak through installation of clamps. The focus of this effort was primarily on locating and sealing the leak quickly and effectively). As part of its review, Commission staff investigated three project alternatives that would reduce or eliminate the need for dredging and filling. These alternatives included a “no project” alternative of not installing the clamps; the use of other applied materials (e.g., plugs and/or wraps) to seal the leak; and replacing the affected pipeline section instead of plugging, wrapping, or covering the affected pipeline sections with clamps. With respect to the no project alternative (i.e., not repairing the damaged portion of the pipe), while it would eliminate the need for immediate dredging and filling, it would not address the issue of oil release from the damaged pipeline and would likely exacerbate the damage and risk to coastal resources associated with that release. This alternative was therefore rejected as more environmentally damaging. The second alternative, using another type of applied material to plug or wrap the pipe at the breach point to seal the leak, could reduce the amount of fill required, but given the need to increase operating pressure to evacuate the line, it was determined to be less secure and could increase the chance of another oil release. This alternative was therefore also rejected as more environmentally damaging. Replacing, instead of repairing, the affected pipeline sections was similarly rejected due to the significant increases it would cause in the complexity and duration of the work as well as its potential to result in adverse resource impacts. The underwater location of the pipeline segment and its depth at 40-feet below the surface limit available work windows and the type of work that can be carried out. Moreover, replacing the damaged section of buried pipe would likely increase the amount of excavation and fill needed. Cutting and replacing the damaged pipe segment, even with appropriate spill containment procedures in place, would be a much more difficult and complex task and would have a higher potential to result in adverse impacts to water quality and marine life when compared to the installation of clamps on the pipeline. Thus, the proposal to install repair clamps, which would be bolted over the affected pipeline segments as external sleeves, was chosen in part due to its simplicity and ability to be completed quickly and effectively in a challenging underwater work environment.

The Commission therefore finds that “no feasible less environmentally damaging alternative” to the proposed project exists and the proposed project is therefore consistent with the second test of Section 30233(a).

### ***Mitigation Measures***

The final test of Coastal Act Section 30233(a) requires that feasible mitigation measures have been provided to minimize any adverse effects of the filling of coastal waters.

DCOR implemented several measures during the project to minimize adverse effects of the dredging and filling, including the use of hand tools and low impact techniques to minimize subsea disturbance. Divers used air operated hand tools for displacing loose sediment and adjusted the intensity of the air tube as needed to minimize sediment



disturbance and turbidity plume development. Static (non-powered) tools including hand shovels, rakes, and scrapers were also used to minimize subsea disturbance. All repair work was conducted under a pollution or recovery dome that was erected and secured in place over the work area to capture and contain positively buoyant materials such as oil as well as suspended sediments and turbidity released into marine waters during excavation and pipeline inspection activities.

As discussed in the Marine Resources section below under the heading *Temporary Loss of Habitat*, the temporary excavation of sandy sediments within the repair corridor would cause temporary disturbance of benthic habitat and the mortality and loss of associated organisms. However, given the small size of the repair corridor footprint and associated disturbance areas relative to the abundance of similar benthic habitat in the project area, adverse impacts to marine life associated with uncovering the pipeline were not significant. Concerns were also raised with the possibility that construction related materials or debris would be left onsite after project completion. In this case, other standard marine construction mitigation and protection measures, such as establishing a safety zone around the work site, developing a project specific anchoring plan, and using qualified marine mammal monitors during construction, would have helped minimize risks to marine life, productivity, and water quality. However, without Commission review before starting construction, there was no opportunity for such measures to be developed and included in the project.

To address the concern of possible construction related materials/debris remaining at or near the construction site and having an adverse effect on marine life, productivity, and water quality, the Commission is requiring in **Special Condition 1** that a post construction assessment of the project site be conducted to help ensure that any such materials are found and removed from the work site.

The Commission therefore finds that measures to mitigate or minimize the adverse environmental impacts associated with the project's use of fill were included and finds that the third and final test of Coastal Act Section 30233(a) has been met.

### ***Conclusion***

Because the three tests have been met, the Commission finds the development, as conditioned, is consistent with Section 30233(a) of the Coastal Act.

## D. MARINE RESOURCES

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The pipeline repair project for which DCOR seeks ATF authorization had the potential to adversely affect marine resources and the biological productivity of coastal waters in the project area by potentially causing adverse impacts to benthic habitats and marine wildlife. The project involved the use of several oil recovery, transport, and support vessels that anchored in the area around the project site and increased vessel traffic in and around the project area. In addition, seafloor construction activities including sand jetting and/or trenching can cause turbidity and resuspension of contaminants in the water column. Air-jetting can cause this sediment to be released into the water column which increases turbidity. Such increases in turbidity can degrade water quality by reducing light penetration, discoloring the ocean surface, or interfering with filter-feeding benthic organisms sensitive to increased turbidity.

### ***Benthic Habitat in the Project Area***

The project site is located within the area known as the San Pedro Shelf. This area consists of a relatively shallow, gently sloping seafloor that extends roughly ten miles offshore in a southerly direction from Long Beach. The area is one of the broadest continental shelf segments between Monterey and the U.S.-Mexico border. Benthic habitat, bathymetric, and marine geological surveys carried out on the San Pedro Shelf indicate that the seafloor at the project site is comprised of fine to medium coarse sands and silts.<sup>17</sup> Within the roughly 40 foot depth range of the project site, the types of soft substrates present likely support a variety of species including fish, rays, anemones,

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<sup>17</sup> Wong, F.L., Dartnell, Peter, Edwards, B.D., and Phillips, E.L., 2012, Seafloor geology and benthic habitats, San Pedro Shelf, southern California: U.S. Geological Survey Data Series 552 (Available at <http://pubs.usgs.gov/ds/552/>.)

polychaete worms, mollusks, and crustaceans. No areas of rocky substrate or canopy forming kelp were identified within the immediate vicinity of the project site.

***Marine Wildlife in the Project Area***

Based on past survey information, the project area is known to be used on a year-round and/or seasonal basis by a variety of species of marine mammals, sea birds, and sea turtles. Marine mammal species likely to be present at the project site include the Humpback whale, Fin whale, Minke whale, California sea lion, harbor seal, Dall's porpoise, Risso's dolphin, Pacific white-sided dolphin, Common dolphin, Northern right whale dolphin, Bottlenose dolphin, Harbor seal, and California sea lion. The site is also identified as a NOAA Biologically Important Area used by both Blue whales and Gray whales for feeding and migration. Two species of sea turtle, the green sea turtle and leatherback sea turtle, also have the potential to be found within the project site, along with 195 species of birds known to occupy coastal and/or offshore aquatic habitats in the area of the project.

***Temporary Loss of Habitat***

In this case, the installation of the pipeline repair clamps involved the temporary daily placement of vessel anchors and equipment footings (oil recovery dome) at the work site, as well as the excavation of an approximately 7-foot wide by 6-foot deep by 12-15-foot long trench in the seafloor.<sup>18</sup> Considering that material from the excavation would be sidecast and likely dispersed across several feet adjacent to the trenches, the total area of benthic habitat that would be affected or disturbed as part of the proposed project is estimated to be in the range of 100-200 square feet.

Due to their small size and limited profile on the eight-inch diameter subsurface pipeline, the placement of the repair clamps did not result in the loss or displacement of any significant amount of benthic habitat. The impacts of the proposed project were therefore limited to short-term effects of excavating the work trenches and anchoring the project vessels and equipment. The several smaller anchoring locations were only temporarily affected during the 33-day project period.

Mobile organisms such as fish, rays, and crabs are expected to be able to relocate to adjacent habitat areas when anchors are installed and the trenches are excavated, but other types of benthic invertebrates such as polychaete worms, anemones, and molluscs may be smothered and killed during these activities or displaced from their burrows and sediment habitat and exposed to predation. However, in the context of the larger project area, the loss of 100-200 square feet of benthic habitat and mortality of a small number of fast-growing benthic organisms due to anchor placement, sediment excavation, and disturbance, would be minor and would not adversely affect the biological productivity of coastal waters or substantially reduce populations of marine organisms.

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<sup>18</sup> Application materials state that the pipe was located roughly 2 feet below the surface and sediment was to be removed 3 feet around the 8" pipe with a trench length of 12-15 feet.

Benthic habitat comprised of fine to medium coarse sands and silts like the habitat present at the project site is dominant throughout the area (covering thousands of acres) and given the similarity of environmental conditions, many of these areas are expected to support similar communities of benthic invertebrates. Therefore, given the small size of the project footprint and disturbance area relative to the abundance of similar benthic habitat in surrounding areas, adverse impacts associated with the pipeline excavation and temporary placement of vessel/equipment anchors would be temporary and insignificant. The narrow configuration of the project footprint and abundance of undisturbed habitat in adjacent areas is also expected to facilitate the expedited recovery and repopulation of the project footprint at the completion of project activities.

#### *Ship Strikes and Marine Wildlife Entanglement*

The proposed project would involve the use of several transport and support vessels and the temporary placement of lines and cables through the water column in open ocean areas known to support diverse populations of whales, dolphins, and other marine mammals as well as ocean foraging seabirds and sea turtles. As such, the project has the potential to result in other potential impacts to marine mammals and to sea turtles through collision with project vessels (“ship strikes”) during marine operations or entanglement in deployed cables and lines.

To minimize this risk, the Commission typically requires applicants to submit a Marine Wildlife Contingency Plan that includes the use of qualified marine observers and safety zones and establishes protocols for vessel uses and speeds around marine mammals and waters likely to support them. While such a plan was not included in this project and many of the typical marine construction protective measures commonly required by the Commission were not implemented, DCOR did implement some measures into the project to help minimize these risks. Such measures included: issuance of a notice to mariners and its periodic update throughout the course of the project; instruction provided to diver teams to be observant of any marine mammals that could enter into the work space and use of an “all-stop” order to minimize risk to them; use of constant daylight aerial observation through helicopter and drone overflights, which included regulatory agency personnel; 24-hour surveillance of the project area by spill response vessels including subsea observation by support personnel on the dive boat and supply/crew boats; daylight surveillance by Platform Eva on-board personnel; constant radio and telephone communication between spill response vessels, dive teams, surface support personnel on boats, shore support personnel, and spill team management personnel. Implementation of these measures likely contributed to the absence of observed negative interactions, collisions, or entanglement events between marine wildlife and project personnel and equipment during the course of the project.

#### *Entanglement of Fishing Gear / “Ghost Fishing”*

The project is located close to large metropolitan population centers and is a popular area for commercial and recreational fishing. Fishermen may snag gear or nets on pipelines or other structures on the seafloor. When this occurs, fishermen generally

abandon their gear or nets (creating “ghost nets”), thereby putting marine mammals and other types of marine wildlife at risk of becoming entangled in this abandoned gear.

In addition to slightly increasing the diameter of the eight-inch diameter pipeline at the repair site through the installation of the repair clamps, DCOR excavated a 12-15-foot-long section of pipeline in order to carry out the repairs. The pipeline is now likely exposed or partially exposed on the seafloor and could potentially pose a risk of entangling fishing gear or other marine debris over time, thereby posing a threat to marine wildlife including marine mammals, fish, and mobile invertebrates. While the pipeline will likely naturally re-bury eventually, complete re-burial could take an extended period of time.

In order to expedite this re-burial and eliminate the risk of the excavated pipeline and clamps entangling fishing gear, **Special Condition 1** would require that the pipeline section exposed as part of the repair project be re-buried in a manner that avoids and minimizes adverse impacts to coastal resources.

### **Conclusion**

Although the Commission finds that the pipeline repair project for which DCOR seeks ATF authorization could have resulted in impacts to marine resources, these impacts were temporary and relatively insignificant. Moreover, with implementation of **Special Condition No 1**, the project will be completed in a manner in which marine resources are maintained, species of special biological significance would be given special protection, the biological productivity of coastal waters would be sustained, and healthy populations of all species of marine organisms would be maintained. The Commission therefore concludes that the project, as conditioned, is consistent with the marine resource policies (Sections 30230 and 30231) of the Coastal Act.

## **E. OIL SPILLS**

Section 30232 of the Coastal Act states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

### **Potential Spill Sources**

Pipeline repairs can result in accidental discharges of oil and other hazardous materials into the marine environment. In this case, the ruptured pipeline may still have residual oil and oily mixtures in it that may be released into the water when repairs are undertaken. Sediments around the location of the spill can also contain residual hydrocarbons that may have accumulated during the spill and can be released or spread by disturbance. The project for which DCOR seeks ATF authorization includes two elements that have the potential to result in the release of oil, petroleum products,

or hazardous substances: (1) construction work and support vessels and associated equipment; and (2) pipeline excavation and trenching.

### *Vessels and Equipment*

The offshore repair operations involved the use of 6 vessels, including 2 Aqueos dive boats, 1 SCSS work/crew boat, and 3 MSRC oil spill response vessels with booming and skimming capabilities. Sources of oil and hazardous materials on these vessels include fuel tanks, oil tanks, engines, oil and fuel lines, hydraulic oil lines and reservoirs, and oil collection tanks. A leak or rupture of one or more of these tanks or lines could occur as a result of a vessel collision, accident, or equipment failure or malfunction, thereby resulting in the potential release of fuel, oil, hydraulic fluid, or other hazardous liquids (such as coolants or lubricants) into the marine environment.

### *Seafloor construction activities*

Seafloor construction activities, including sand air jetting and/or dredging can cause turbidity and resuspension of contaminants in the water column. This can expose marine mammals and their prey to toxins, which are a key threat to and bioaccumulate in marine mammals. Poor water quality conditions harm marine mammals as well as fish and fish nurseries, and sediments can smother and harm or kill benthic species.<sup>19</sup> Depending on water currents and conditions and the method of removing any dredged or other material, the plume can spread for vast distances. Because the sediment that would be air-jetted is within close proximity to the pipeline leak it is possible that oil and other contaminants from the leak have settled within the sediment and could be released into the water column and spread during air-jetting and trenching activities.

### **Spill Prevention**

The first test of Coastal Act Section 30232 requires an applicant to “protect against the spillage of crude oil, gas, petroleum products, or hazardous substances...” In cases like this, the Commission typically requires the applicant to submit a project-specific Spill Prevention and Response Plan that includes measures to minimize the likelihood of an oil spill from project equipment and construction and support vessels. Such measures typically include only using vessels, equipment, and machinery for the offshore work that has been inspected prior to use and found to be in good working condition and free of leaks. In some instances, these plans include a prohibition on activities that can cause even small fuel spills, like at-sea vessel or equipment fueling/refueling.

According to the applicant, equipment and machinery used for the offshore work was inspected prior to use and found to be in good working condition and free of leaks. In addition, DCOR incorporated a number of protective measures into its project that reduced the risk of an oil spill during repair operations. For example, pipeline excavation work was only done during daylight hours with favorable weather, sea conditions, and visibility. According to the applicant, construction teams were also in constant radio and telephone communication between spill response vessels, dive teams, surface support personnel on boats, shore support personnel, and spill team management personnel.

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<sup>19</sup> Wenger et al., A critical analysis of the direct effects of dredging on fish, *Fish and Fisheries* 18:967–985 (2017).

More specifically, subsea divers were directed to adjust the intensity of the air jetting to minimize sediment disturbance and plume development. In addition, divers used specialized repair techniques and best practices when removing the protective Pritec coating in order to prevent oiling. Using the appropriate hand tools, divers were instructed to remove the protective coating on each side of the temporary leak shutoff clamp in 6-inch increments and to provide just enough clearance for quick installation of standby clamps to be slid into position and securely installed. Crews were prepared for the channeling of leaks out of the standby clamps that might have occurred when removing the protective coating. The removal of Pritec coating was also started away from the leak shutoff clamp and worked toward the leak shutoff clamp to prevent additional oiling or release of oil.

With the implementation of spill prevention measures included during the project, the Commission finds that DCOR took appropriate measures to prevent a spill from occurring during the pipeline inspection and clamp installation activities and, therefore, that the development is consistent with the first test of Coastal Act Section 30232.

### **Spill Response**

Notwithstanding implementation of the above-described prevention measures, accidental spills can and do occur and the offshore repair work involve spill risks. The second test of Section 30232 requires that effective containment and cleanup facilities and procedures be provided for accidental spills that do occur. To meet this test, the Commission typically requires an applicant to submit a project specific Oil Spill Prevention and Response Plan that demonstrates that the applicant has sufficient oil spill response equipment and trained personnel to contain and recover a reasonable worst case oil spill, and to restore the coastal and marine resources at risk from a potential oil spill.

In this case, the project included mitigation measures to ensure effective containment and cleanup of accidental spills. The primary containment measure was the use of the underwater pollution dome. All repair work was conducted under an oil recovery dome that was placed over the work area to capture and contain oil releases. Divers were instructed to direct discharges under the oil recovery dome canopy as much as possible to facilitate the capture of released oil. Most importantly with respect to providing effective containment in the event of an accidental spill, MSRC (the applicants contracted Oil Spill Response Organization pre-positioned response vessels with boom at the site for any release of hydrocarbon on water).<sup>20</sup> The start of work was only allowed after these mitigation measures were in place.

The repair activities proposed in this for this AFT authorization would not increase the risk of offshore oil spills but would rather reduce such risks. The Commission therefore concludes that, as conditioned to further minimize risks, the project includes sufficient assurances to enable a finding of consistency with Section 30232 because protection

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<sup>20</sup> The following vessels were on site prior to start of evacuation work: a. Ocean Guardian (with 2000' boom on board) b. Recon 3 and Response 1 with 1000' boom deployed and ready c. Response 3 and Marlin with 500' boom ready for deployment.

against accidental spills associated with the repair activities will be provided and if occurring, will be effectively contained and cleaned up.

## F. COMMERCIAL AND RECREATIONAL FISHING

In addition to the protection afforded commercial fishing in Section 30230 stated above, Coastal Act Section 30234.5 states:

*The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

Potential adverse impacts to commercial and recreational fishing could result from: (1) the temporary preclusion of fishing vessels from the project area during the proposed pipeline repair activities; and (2) the potential loss of fishing gear that snags on the pipeline or repair clamps after completion of the project.

For health and safety reasons, commercial and recreational fishing was precluded from the proposed offshore work site and adjacent waters during the pipeline investigation, excavation, and installation of the repair clamps. These in-water activities took 34 days to complete. To reduce the potential for this access restriction to adversely affect fishing, DCOR provided a Notice to Mariners in advance of the start of offshore project activities, which continued daily for the duration of the project. By providing the fishing community with advance notice of the location, duration, and size of the project work areas, adverse impacts to fishing were minimized by allowing fishers to temporarily relocate and plan around the restricted access areas. Based on the small area of the proposed work site and the limited duration of in-water activities, Commission staff estimates that adverse impacts to commercial and recreational fishing due to the temporary loss of this area would not be significant.

Potential adverse impacts to commercial and recreational fishing could also occur due to entanglement, damage or loss of fishing gear due to interaction with the exposed pipeline or repair clamps. During recent repairs to the damaged San Pedro Pipeline associated with the unrelated Amplify spill, it was reported that several nets of commercial squid fishers have gotten snagged on the exposed bolts and the nets were ripped. However, as discussed in the marine resources section above, **Special Condition 1** requires reburial of the excavated pipeline segments and repair clamps, thus eliminating this gear entanglement risk.

With implementation of all the above-described measures to minimize effects on the location of fishing activities, the Commission finds that the economic and commercial and recreational importance of fishing activities would be protected and that the proposed project, as conditioned, is consistent with Coastal Act Sections 30230 and 30234.5.



## **G. VIOLATION**

On October 13, 2022, Commission enforcement staff sent a Notice of Violation letter (“NOV”) to DCOR that detailed the violations at the site as known to the Commission, including, 1) the discharge of oil from Line 0919 into the surrounding ambient ocean environment, resulting in the fouling of state waters and beaches; 2) the release of additional oil into the ocean in an effort to locate the spill release point; 3) excavation trenching of the ocean floor to expose the buried pipeline; and 4) the installation of a temporary 8”x12” repair clamp around the damaged pipe to stop the leak, followed by the installation of a final 8”x18” Plidco repair clamp.

The definition of “development” is broadly defined in Section 30106 of the Coastal Act. It includes activities “on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...” The discharge of oil from the oil pipeline into coastal waters and onto beaches; the purposeful release of additional oil to locate the source of the leak; the excavation trenching of the seafloor; and installation of the temporary repair clamp, followed by installation of a final repair clamp around the damaged pipe, each constitute “development” under the Coastal Act. Section 30600(a) of the Coastal Act requires that prior to performing or undertaking any development, one must first obtain authorization under the Coastal Act, in addition to obtaining any other permit required by law. This usually takes the form of a CDP, but in time-critical situations, the Coastal Act has provisions for expedited legal authorizations such as Emergency CDPs. Any development activity conducted in the coastal zone without valid authorization constitutes a violation of the Coastal Act. Therefore, the activities described above are unpermitted development, constituting Coastal Act violations.

The discharge of oil, including the tarballs that washed up on beaches in Orange County, adversely affected public access and recreation in this location. During the leak investigation and pipeline repair activities, boaters, fishers, and other potential on-water recreational users were limited from accessing the water in the area around the development. The discharge of oil into the marine environment also had the potential to impact the water quality, health, and biological productivity of the marine environment and the marine organisms who inhabit coastal waters. While there were impacts to coastal resources, the duration of the leak and the quick response of the Unified Command limited such impacts.

DCOR worked quickly and in a cooperative manner to address the Coastal Act issues. Prior to the October 2022 NOV, DCOR had already submitted a CDP application to seek authorization for the repair work, after the fact. Because of this, it provided both parties an opportunity to incorporate full resolution of the Enforcement matter into the proposed project quickly and efficiently. In order to address the Commission’s claims for

monetary penalties for these violations under Chapter 9 of the Coastal Act, to avoid the cost and uncertainty of contested administrative proceedings and potential litigation, and to otherwise fully resolve the alleged violations at issue, DCOR is proposing to pay, within 90 days of approval of this CDP, \$200,000 to the Violation Remediation Account, an account held and controlled by the State Coastal Conservancy and which is used to fund environmentally beneficial projects, enhance public access and recreational opportunities, and acquire land and open space/public access easements, among other things. Approval of this permit pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit, including payment of \$200,000 within 90 days of approval of this CDP, will result in resolution of all Coastal Act claims specifically described herein or which relate to the specific activities that are the subject of the Notice of Violation. Although development for which the applicant seeks after-the-fact authorization has taken place prior to submission of this permit application, the Commission's consideration of that requested authorization has been based solely upon the Chapter 3 policies of the Coastal Act.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to any other violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any other development, other than the development approved herein. In fact, approval of this permit is possible only because of the terms and conditions included herein and the applicant's presumed subsequent compliance with these terms and conditions; failure to comply with these terms and conditions in conjunction with the exercise of this permit and failure to pay the \$200,000 to the Violation Remediation Account within 90 days of approval of this CDP would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development described herein and for any violations of this permit, unless and until the terms and conditions of approval included in this permit are satisfied and the payment of \$200,000 is transmitted to the Violation Remediation Account within 90 days of approval of this CDP. Failure to comply with the terms and conditions of this permit including this payment referenced above may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The proposed after-the-fact development has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. The Commission incorporates its findings on Coastal Act consistency into this CEQA finding as if set forth in full. Mitigation measures, including conditions addressing fill of coastal waters, marine resources, oil spills, commercial fishing, and public access and recreation will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the after-the-fact development as conditioned is consistent with the requirements of the Coastal Act to conform to CEQA.

**Appendix A: Substantive File Documents**

*Coastal Development Permits and Application Materials:*

Coastal Development Permit No. E-84-002

Coastal Development Permit Application No. 9-22-0219 and associated file documents